

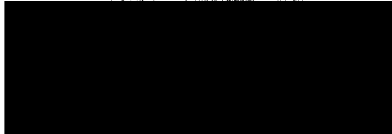
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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536



File: LOS 214F 1932 Office: LOS ANGELES, CALIFORNIA

Date:

APR 10 2003

IN RE: Petitioner:



Petition: Petition for Approval of School for Attendance by Nonimmigrant Students under Sections 101(a)(15)(F)(i) and (M)(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(15)(F)(i) and (M)(i)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Petition for Approval of School for Attendance by Nonimmigrant Students (Form I-17) was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the case will be remanded to him for entry of a new decision.

The petitioner is a private parochial elementary and secondary school.

After an on-site inspection by a Bureau contractor, the district director denied the petition, finding that the petitioner failed to submit sufficient evidence concerning the size of the school's physical plant, the amount and character of supervisory and consultative services available to students, and the school's finances. The district director further found that the petitioner failed to submit sufficient evidence to demonstrate that it is accredited and that it qualifies graduates for acceptance by schools of higher education. The district director found that the petitioner failed to submit sufficient evidence to demonstrate that it is an established institution of learning, a bona fide school, and that it is engaged in instruction. The district director further found that the petitioner failed to submit sufficient evidence to establish that the school complies with all health, safety, and fire standards, business licensing, and zoning requirements applicable to non-public schools.

Pursuant to 8 C.F.R. § 103.2(b)(8), where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Bureau finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Bureau shall request the missing initial evidence, and may request additional evidence.

On appeal, the petitioner submits additional documentation.

The record of proceeding consists of a petition with supporting documentation, the district director's decision, and an appeal with supporting documentation.

8 C.F.R. § 214.3(b) specifies required supporting evidence, in pertinent part, as follows:

A petitioning private or parochial elementary or secondary school system shall submit a certification signed by the appropriate licensing, approving, or accrediting official who shall certify that he or she is authorized to do so to the effect that it meets the requirements of the State or local public educational system. . . . A school catalogue, if one is issued, shall also be submitted with each petition. If not included in the catalogue, or if a

catalogue is not issued, the school shall furnish a written statement containing information concerning the size of its physical plant, nature of its facilities for study and training, educational, vocational or professional qualifications of the teaching staff, salaries of the teachers, attendance and scholastic grading policy, amount and character of supervisory and consultative services available to students and trainees, and finances (including a certified copy of accountant's last statement of school's net worth, income, and expenses).

Size of school's physical plant.

On appeal, the petitioner provides the Bureau with an architectural layout of the school premises that states that the five classrooms are each 1200 square feet. The record of proceeding contains notes taken by a contractor who visited the petitioner's school facility and indicated that the school has five classrooms, each 700 square feet in size. The petitioner should be given an opportunity to explain the discrepancies in the descriptions of the school premises.

The amount and character of supervisory and consultative services available to students.

On appeal, the petitioner establishes that academic and psychological counseling are available to the students. The petitioner has overcome this objection of the district director.

School finances.

The petitioner initially provided the Bureau with balance sheets covering the years 1999 through 2002. In response to the district director's concern regarding the insufficient evidence provided regarding the school's finances, the petitioner provided the Bureau with tax returns for 2000 and 2001. The petitioner has failed to overcome the district director's objection. The regulation clearly requires that the petitioner provide the Bureau with a *certified copy of an accountant's last statement of the school's net worth, income, and expenses*. The statement provided is not certified by an accountant. On remand, the district director should request a certified copy of an accountant's last statement of the school's net worth, income and expenses as required by 8 C.F.R. § 214.3 (b).

Evidence of licensure, accreditation or approval.

8 C.F.R. § 214.3(b) provides in pertinent part:

A petitioning private or parochial elementary or secondary school system shall submit a certification signed by the appropriate public official who shall certify that he or she is authorized to do so to the

effect that it meets the requirements of the State or local public educational system.

Administrative notice is taken that the California Department of Education does not license, evaluate, recognize, approve or endorse any private elementary or secondary school or course.¹ The petitioner provided the Bureau with evidence that it has filed "private school affidavits" with the California Department of Education in the years 1999 through 2001. On remand, the district director shall ask the petitioner to provide a letter from the California Department of Education certifying that the petitioner has complied with the California Education Code, or other evidence to establish that the petitioner is in compliance with California law governing private elementary and secondary schools.

The district director denied the petition, finding that the petitioner failed to submit sufficient evidence to demonstrate that it is accredited. The regulations do not require all private parochial schools to be accredited. The regulations provide that "[a]ny other petitioning school shall submit a certification by the appropriate licensing, approving, or accrediting official. . . to the effect that [the petitioner] is licensed, approved, or accredited." 8 C.F.R. § 214.3(b). In the instant case, the petitioning school is a private parochial elementary and secondary school. The regulation specifically states that private or parochial elementary or secondary schools must meet the local requirements to operate as a school, as discussed in the paragraph above. The language relating to "any other petitioning school" is inapplicable to the petitioner.

8 C.F.R. § 214.3(e)(1) provides that the evidence with respect to the petitioning school must establish that:

- (i) It is a bona fide school;
- (ii) It is an established institution of learning or other recognized place of study;
- (iii) It possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses; and
- (iv) It is, in fact, engaged in instruction in those courses.

As evidence that it is a bona fide school, the petitioner submits copies of the petitioner's private school affidavits filed with the California Department of Education each year since 1999.

¹ California Dept. of Education Fact Book 2002 as found at <http://www.cde.ca/gov/resrc/factbook/privateinstruc.htm> as accessed on 4/8/2003.

In review, the private school affidavits, the school site inspection report, and the letter of approval for candidacy status for accreditation² are sufficient evidence that the petitioner satisfies 8 C.F.R. § 214.3(e)(1)(i), (ii), (iii) and (iv).

In his denial, the district director indicated that the petitioner failed to provide the Bureau with evidence that it is in compliance with all health and safety standards. It is noted that the Bureau regulations do not require compliance with health and safety standards. To the extent that this may be a requirement of the State of California for private or parochial schools, the letter from the California Department of Education should indicate that the petitioner is in compliance with such standards.

Beyond the decision of the district director, the record is insufficient to establish that the petitioning school satisfies the compulsory attendance requirements of the State in which it is located as required by 8 C.F.R. § 214.3(c).

This case shall be remanded to the district director to issue a request for evidence from the petitioning school as outlined above. After receipt and consideration of the additional evidence, the district director shall enter a new decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The district director's decision is withdrawn. The case is remanded to the district director for action consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.

² On appeal, the petitioner submits evidence that the petitioner was granted "candidacy" status on January 27, 2003, by the Schools Commission of the Western Association of Schools and Colleges (WASC).